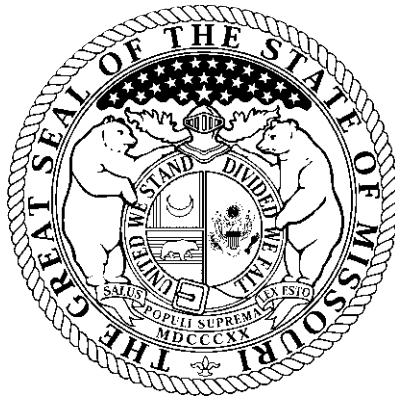


# RAISING CAPITAL IN MISSOURI

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A GUIDE FOR SMALL BUSINESSES



*Published by*  
**Matt Blunt**  
*Secretary of State*



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# **RAISING CAPITAL IN MISSOURI**

## **A GUIDE FOR SMALL BUSINESSES**

This pamphlet is designed to provide the owner of a small business with information necessary to raise capital under the Missouri Securities Laws. These laws serve to protect investors and promote capital formation, both of which are essential for maintaining a healthy business economy. Strong enforcement of the securities laws, including the provisions against fraud, creates an environment in which individual investors can feel some degree of safety and in which the capital markets can operate in an orderly fashion. Most states that have strong business economies have the same or similar laws and active enforcement of those laws.

These laws may sometimes seem confusing to a small business seeking to raise capital. This pamphlet will provide guidance as to how to raise capital in compliance with the securities laws with a minimum burden to small businesses.

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<b>In general</b>	The securities laws have the greatest impact on small businesses in the area of registration of securities. Missouri law provides that all securities sold in the state must either be registered with the Commissioner of Securities or be exempt from registration. Because the registration of securities often involves significant costs, including legal and accounting fees of \$15,000 to \$20,000, registration should be considered only in those situations in which a fairly large amount of money is to be raised or when no exemptions are available. The Missouri securities laws were written to provide exemptions for small business offerings. The seven basic provisions on which a small business might rely follow.
<b>Institutional Buyer Exemption</b>	Section 409.402(b)(8) is the institutional investor exemption. This exemption allows an unlimited dollar amount to be raised from an unlimited number of investors. However, sales may only be made to institutional investors such as financial institutions, large organizations that have been in existence for ten years and whose net assets exceed \$500,000, or pension and profit-sharing plans that have institutional managers. If a small business has the opportunity to sell its securities to such institutions, it may sell an unlimited amount of its securities to such institutions. The problem with this exemption is that most new businesses will be unable to interest institutional investors in their securities.
<b>First 25 Persons Exemption</b>	Section 409.402(b)(9) provides for the sale of securities to not more than 25 investors (within or outside of Missouri) if the seller pays no com-

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pensation for soliciting the sale and engages in no public advertising. This exemption allows a business to raise an unlimited dollar amount and may be used with 409.402(b)(8) and 409.402(b)(10). **Keep in mind** that the seller must comply with the restrictions on advertising and commissions. Many people mistakenly believe that as long as there are 25 or fewer investors, the exemption is automatically available. **If the offering is advertised or compensation is paid, the exemption is not available.** The Securities Division receives a number of inquiries regarding whether a disclosure document is necessary under this exemption. Anyone who sells a security must make a full disclosure of all material facts. This exemption does not require that the disclosure be in writing; however, it may be wise to make written disclosure. Written documents relating to risks of the venture or special arrangements are always helpful in the event of any disagreements later. This exemption does not require a filing with the Commissioner of Securities.

**Fifteen  
Transactions  
in Twelve  
Months  
Exemption**

Section 409.402(b)(10) provides for 15 transactions in the State of Missouri in a 12-month period. This exemption refers to transactions, not to investors as (b)(9) does; therefore, if one investor invested on three separate occasions, it would count as three transactions. As with (b)(9), there is no dollar limitation on the amount that can be raised but there is a prohibition against advertising. A selling commission of up to 10% can be paid to Missouri registered broker-dealers. In addition, this exemption

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requires investors to sign an “investment letter” stating that they are purchasing the securities for investment purposes. A form of the investment letter may be obtained from the Securities Division. There is no filing requirement with the commissioner’s office unless the seller seeks a waiver in order to sell to a greater number of investors or to be able to pay commissions to a broker-dealer not registered in Missouri. Waivers may be granted for good cause; however, there is a fee of \$100 for a waiver request, and an offering document must be filed. It is the responsibility of those who rely on the exemption to maintain adequate records to prove compliance with the exemption. While there is no requirement of a written disclosure document, an offering document is advisable, for reasons already mentioned. This exemption can be relied on after the initial 12 months as many times as necessary as long as there are no more than 15 transactions in any given 12-month period. This exemption can be combined with the (b)(9) exemption, and offers small businesses an opportunity to raise money from 40 investors in an unlimited dollar amount when they engage in no advertising and pay no commission, without the necessity of a filing with the Commissioner of Securities.

**“Reg D” or  
Uniform  
Limited  
Offering  
Exemption**

Another exemption is based upon the uniform Limited Offering Exemption and Regulation D. This regulation was adopted with the intent of assisting small businesses in raising capital, both federally and at the state level. This is important

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if the offering is going to be made in a number of states. This exemption, found in Chapter 54 of the *Code of State Regulations*, allows for sales to 35 “unaccredited” investors and an unlimited number of accredited investors. Accredited investors are defined as financial institutions, business organizations, or individuals whose net worth exceeds \$1 million, or whose income in the two most recent years exceeds \$200,000. This exemption provides that an investment is considered to be suitable if it does not exceed 20% of the investor’s net worth. This regulation does require that certain financial information regarding the company be given to investors. A \$100 filing fee and a Form D must be filed with the Missouri Securities Division within 15 days after the first sale in the State of Missouri. For those reasons, an attorney is usually involved in these offerings. The advantages of this exemption are that it allows for an unlimited dollar amount under certain conditions and ties into a federal exemption if securities sales are to occur across state lines.

**Accredited  
Investor  
Exemption**

This exemption permits sales to an unlimited number of accredited investors as defined under “Reg D.” No filing with the commissioner is required to qualify for this exemption. The issuer or broker-dealer relying on this exemption must, however, obtain and retain in its records a statement signed by the investor indicating that the security is not registered, that it



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may be disposed of only through a licensed broker-dealer and that it is a felony to sell securities in violation of Missouri law. This exemption is available for public as well as private securities offerings.

**Missouri  
Issuer  
Registration**

The Missouri issuer registration was designed for Missouri businesses seeking to raise up to \$1,000,000. Eighty percent of the proceeds of an offering registered under this provision must be used in the state of Missouri. These offerings may be publicly advertised, and may be sold to an unlimited number of investors, although the investors must have an income of at least \$30,000 and a net worth of \$30,000, or a net worth of \$75,000, if they are to invest more than \$500. In order to register under this provision, an issuer must submit a disclosure document to the Securities Division for review. The filing fee is \$100. The Missouri issuer registration also permits a company to solicit up to \$100,000 prior to completion of the disclosure document using a business plan which has been filed with the Securities Division. Any money raised prior to completion of the registration process must be held in escrow, and may not be released until investors have had a chance to review the completed disclosure document.

**Kansas/  
Missouri  
SCOR  
Program**

Missouri has entered into an agreement with the state of Kansas that provides for the coordinated review of small company offerings. This program is available for any Missouri or

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Kansas company that wishes to offer its securities in both states.

Only issuers who are offering their securities in connection with SEC Regulation A or Regulation D 504 are eligible for the program. The issuers must comply with the North American Securities Administrators Association Statement of Policy Regarding Small Company Registration. An issuer would file the Kansas-Missouri Coordinated Review of Small Company Registration Offerings Application Form in both states. The states would designate a lead-state. The lead-state would coordinate all comments to the issuer. The issuer would resolve all comments through the lead-state. Once the lead-state clears the application, the application becomes effective in both states. An information packet regarding the Kansas/Missouri SCOR Program is available upon request.

**Midwest  
Regional  
Review  
Program**

The Midwest Regional Review Program is available to issuers that desire to offer their equity securities in at least two of the ten participating Midwestern states. Participating states are Illinois, Indiana, Iowa, Kansas, Michigan, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin. This program is designed for the coordinated review of companies issuing securities in connection with SEC Regulation A or Regulation D Rule 504. The issuers must comply with the North American Securities Administrators Association Statement of Policy Regarding Small Company Registration. Only equity offerings not exceeding \$5 million, consisting of common stock, preferred

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stock, membership interests, or units consisting of equity securities and warrants to purchase equity securities will be considered for coordinated review. An issuer must file the Midwest Regional Review Application in each of the Midwestern states that it wishes to register in. The states would designate a lead-state. The lead-state coordinates all comments to the issuer. The issuer would resolve all comments through the lead-state. Once the lead-state has cleared the application, the application becomes effective in the rest of the states. An information packet regarding the Midwest Regional Review Program is available upon request.

**Tax  
Credit  
Exemption**

As of January 1993, the Missouri legislature has authorized a tax credit for investment in Missouri small business. The tax credits themselves are administered by the Department of Economic Development. In order to be considered for tax credits, however, the securities offering must be either registered or specifically exempt under a provision of the Missouri securities law that requires 80% of the proceeds to be used in Missouri. The tax credit exemption allows for the use of any applicable registration or exemption provision for purposes of the tax credit program so long as the issuer meets the Missouri investment requirement. A disclosure document must be filed with the Securities Division in order to rely on this exemption. The filing fee is \$100.

**Integration**

A person who relies on any exemption should be careful not to construct his or her program as a

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**Proving  
an  
exemption**

series of offerings that are actually part of a single plan of financing. For example, a promoter cannot set up five different companies, each falling within the exemptions, and use the proceeds for the same general purpose in a single plan of financing. If a plan of financing is set up in this manner, it is said to be “integrated,” or in other words, a single offering for purposes of the exemptions. “Integration” of a series of offerings may result in a violation of the securities laws.

The burden of proving any exemption is on the business claiming it. In addition, exemptions only exempt the seller from the registration requirements of the statute. No one is exempt from the requirements of the antifraud provisions, including the requirement to disclose all material information. This requirement causes offering documents to be 50 to 100 pages long. Any person who violates the antifraud provision or who sells a security without registration or a valid exemption, creates liability to all purchasers of the securities for the amount of the purchase plus 8% interest. In addition, the seller is subject to criminal prosecution of a felony, punishable by 10 years in prison, a \$500,000 fine or both. For this reason, it is extremely important to comply with all requirements of the securities laws. It is no defense that a company thought it had an exemption or tried to make full disclosure. In addition, keep in mind that the explanations in this pamphlet are general and anyone making a securities offering should

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review the actual statutes and regulations prior to effecting a securities transaction.

### **Selling the Securities**

A small business making a securities offering must consider who will sell its securities. The first three exemptions mentioned allow any individual who represents the issuer to sell the securities without having a license with the Commissioner of Securities. The Reg D exemption allows an officer, director or *bona fide* employee of the company issuing the securities to sell without a license (a *bona fide* employee would be employed for some purpose other than selling securities). If it is necessary to license a salesperson, the sales person must pay a fee of \$50, file the appropriate registration forms and either pass certain exams or be granted a waiver. Waivers have been granted when the agent is a *bona fide* employee with significant familiarity with the offering when the offering is relatively simple. If the company retains another company that specializes in selling securities, known as a broker-dealer, that broker-dealer must be registered in Missouri.

### **Material facts**

As has been mentioned above, a seller of securities is responsible for disclosing all material facts concerning a proposed transaction to the prospective investor. A material fact is any fact that may have an impact on that individual's decision to invest. For that reason, the less involved the prospective investor is with the current operation of the business seeking to raise capital, the greater need to give additional disclosure. A written disclosure document that sets

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out all the material facts may be a very worthwhile protection.

**Unregistered,  
non-exempt  
sales**

If you realize, after reading this pamphlet, that you or your company have raised capital in an improper way, the best thing for you to do is to contact the Enforcement Section of the Securities Division. It may be that an exemption is available of which you are not aware. If no exemption is available, the division will help you to extend an “offer of rescission”, which is an offer to give the investors’ money back with interest, in order to resolve the potential problems of civil and criminal liability discussed above.

**Conclusion**

Missouri securities laws are designed to protect investors and to promote capital formation in the state. The legislature, the Secretary of State and the Commissioner of Securities have taken a number of steps to assure that while investor protection is the foremost job of the office, small businesses will be able to raise the capital they need to keep the Missouri economy vibrant and growing. We hope this pamphlet will assist, in some manner, the process of small business capital formation in the State of Missouri.

**Services of  
the Missouri  
Division of  
Securities**

The Missouri Securities Division is a division of the Office of the Secretary of State. The Securities Division registers offerings of securities, licenses individuals who sell securities, grants exemptions from registration and issues opinions concerning the legality of proposed activities. The staff of the division is available to

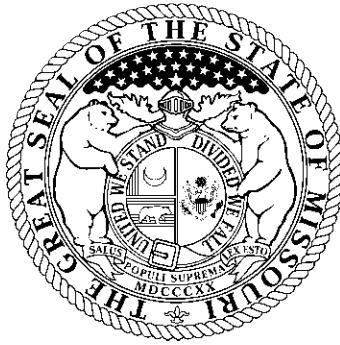
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answer questions you may have concerning capital formation between the hours of 8 a.m. to 5 p.m. The office is located in Room 229 of the James C. Kirkpatrick State Information Center in Jefferson City.

Inquiries about securities registration/exemptions:  
(573) 751-4136

Inquiries about agent licenses/exemptions:  
(573) 751-2061

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Jefferson City, MO 65102-1276



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